
(1936) 02 MAD CK 0024
In the Madras High Court

Thottan Veetan Unni Muhammad APPELLANT
Vs
Malayilthoti Mammatheesa's son Marakkarutti and Another RESPONDENT

Date of Decision : 19-02-1936

Acts Referred:

Citation : AIR 1936 Mad 713 : (1936) 44 LW 32 : (1936) 71 MLJ 342

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The arbitration in this case was not in a pending suit; nor was there an order of reference on an agreement to refer.

The parties had referred the matter to arbitration without the intervention of the Court, and the award having been made, the respondents applied

to the District Munsif to give effect to it. Of the three groups of clauses of Schedule II, Civil Procedure Code, it is the third therefore that is applicable.

2. The petitioner resisted the application on the ground that there was a written award on the 7th June, and that one of the arbitrators, dissenting

from its terms, refused to sign it. The contention is, that the submission required that the decision should be unanimous and that as one arbitrator

dissented, the award was not valid and binding. It is unnecessary to consider whether this construction of the submission is right or not. What the

lower Courts have concurrently found is, that on the previous day the arbitrators had delivered an oral unanimous award but that on its being

reduced to writing on the seventh, one of them resiling from his decision refused to sign it. On that finding, the question arises, was there a valid

award to which effect could be given?

3. Whereas paragraph 10 enacts that the arbitrators shall sign the award, paragraphs 20 and 21, which alone govern the present case, contain no such provision. True, both the last mentioned paragraphs refer to the award being filed in Court which pre-supposes the existence of a written record; but they do not prescribe as a condition of its validity that the award shall be in writing. It is reasonable to hold, having regard to the difference in the wording between paragraph 10 on the one hand and paragraphs 20 and 21 on the other, that the legislature intended to prescribe a different rule in respect of the awards governed by the last mentioned paragraphs. The case would have been entirely different if the arbitrators themselves had contemplated that there was to be no award unless it had been reduced to writing. In such a case it is impossible to dissociate the decision from the writing; in other words, the award does not become complete until it has been reduced to writing and has been signed.

4. The cases that have been cited at the bar show that this is the view that has been consistently taken *Ram Bilas Singh v. Birich Singh* ILR (1931) 11 Pat. 131, *Savlappa v. Devchand* ILR (1901) 26 Bom. 132 and *Tara Prasad Singh and Another Vs. Raja Singh and Others*, . That an award under the general law need not necessarily be in writing, has been decided in *Amir Bi Bi v. Arokiam* (1917) 34 M.L.J. 183. In my opinion these decisions lay down the correct principle and I must uphold the lower Court's view. Mr. Govinda Menon, the petitioner's learned Counsel, relies upon *Har Charan Singh v. Mohan Singh* AIR 1935 Lah. 491. But in that case the so-called oral award was held to be not complete and the final and the only award was what was reduced to writing. That being so, that case does not help the petitioner.

5. In the result, the Civil Revision Petition fails and is dismissed with costs.